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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re the Marriage of ARTHUR and POLINA TSATRYAN.	B262680 (Los Angeles County Super. Ct. No. BD512645)
ARTHUR TSATRYAN, Appellant, v. POLINA TSATRYAN, Respondent.	

APPEAL from an order of the Superior Court of Los Angeles County, Mark A. Juhas, Judge. Affirmed.

Arthur Tsatryan, in pro. per., for Appellant.

No appearance for Respondent.

INTRODUCTION

This is the fourth appeal by Arthur Tsatryan[1] in this dissolution action. He appeals from an order granting a judgment of dissolution and granting Polina Tsatryan sole legal and physical custody of the parties' son, Alexander, also called Alex.[2]

In the first appeal, Arthur challenged an order denying his request to change child custody and his motion to relieve Alex's court-appointed counsel. We affirmed the trial court's order denying the motion to relieve counsel and dismissed the appeal from the trial court's order denying the request to change custody. (*In re Marriage of Tsatryan* (Sep. 15, 2014, B247448) [nonpub. opn.].)

In the second and third appeals, Arthur challenged an order granting Polina's requests for accounting fees and for

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[1] For convenience and clarity, and intending no disrespect, we refer to Arthur and Polina Tsatryan by their first names. (See *In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 817, fn. 1; *In re Marriage of Lucio* (2008) 161 Cal.App.4th 1068, 1072, fn. 1.)

[2] Arthur purports to appeal from the February 11, 2015 order setting forth the trial court's statement of decision. We deem the appeal to have been taken from the February 9, 2015 dissolution/custody order. (*Baldwin Park Redevelopment Agency v. Irving* (1984) 156 Cal.App.3d 428, 433 ["an incorrectly framed notice of appeal will be construed to refer to the correct appealable order assuming that the intention of the appellant is clear"]; see also *Yolo County Dept. of Child Support Services v. Lowery* (2009) 176 Cal.App.4th 1243, 1246.)

attorneys' fees and costs and an order granting attorneys' fees to Alex's court-appointed counsel. We affirmed both orders. (*In re Marriage of Tsatryan* (June 17, 2015, B251033, B256458) [nonpub. opn.].)

In this appeal, Arthur challenges the trial court's decision after a three-day trial to grant sole legal and physical custody of Alex to Polina. He does not challenge the judgment of dissolution. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Background*

"Arthur and Polina . . . were married on August 5, 1987. They separated on August 3, 2009, and Arthur filed a petition for dissolution of marriage on September 23, 2009. The parties have three sons. The youngest, Alexander, born in 2001, was a minor at the time Arthur filed his dissolution petition.

"After almost two years of acrimonious litigation, the trial court on September 6, 2011 indicated that it was granting Arthur and Polina joint legal custody over Alexander. Pursuant to stipulation, Polina retained primary physical custody over Alexander, and Arthur had visitation on alternate weekends. The court set a hearing on child custody and visitation for April 5, 2012.

"After a number of continuances and further sparring, the trial court on July 10, 2012 appointed David E. Rickett to serve as counsel for Alexander, pursuant to Family Code section

3150.[3] The reason for this appointment was to '[a]rticulate whether [Alexander] wishes to be heard; advise as to [Alexander's] level of maturity; [and] represent [Alexander] if his testimony is taken.'" (*In re Marriage of Tsatryan*, *supra*, B247448, at pp. 2-3, fn. omitted.)

The parties had a dispute regarding Alex's education, which resulted in the trial court on July 30, 2012 ordering Arthur and Polina to enroll in co-parenting counseling with a counselor experienced in high conflict cases. "On August 29, the trial court modified the custody order and granted the parties joint legal and physical custody of Alexander, with each party having alternate weeks with the child." (*In re Marriage of Tsatryan*, *supra*, B251033, B256458, at p. 3.)

"On January 28, 2013 Arthur filed a request for modification of child custody and support, seeking legal and physical custody of Alexander, with visitation for Polina on alternate weekends. He also sought child support from Polina and an order compelling her to attend 52 parenting sessions. In his supporting declaration, Arthur challenged Polina's ability to care for Alexander. He claimed Polina was attempting to

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3 Family Code section 3150 provides: "(a) If the court determines that it would be in the best interest of the minor child, the court may appoint private counsel to represent the interests of the child in a custody or visitation proceeding, provided that the court and counsel comply with the requirements set forth in Rules 5.240, 5.241, and 5.242 of the California Rules of Court. [¶] (b) Upon entering an appearance on behalf of a child pursuant to this chapter, counsel shall continue to represent that child unless relieved by the court upon the substitution of other counsel by the court or for cause."

alienate Alexander from him and was not obeying court orders, such as the order to attend counseling." (*In re Marriage of Tsatryan*, *supra*, B247448, at p. 4.) The trial court denied the motion on February 19, 2013, finding "that Arthur had not shown it was in Alexander's best interest to make a change. The court also stated that there was no reason to make a change in custody before the trial, which was set for the near future." (*Id.* at p. 5.)

Arthur appealed from the order denying his request for modification of child custody. We dismissed the appeal on the ground an order denying a request for modification of an interlocutory child custody order is nonappealable. (*In re Marriage of Tsatryan*, *supra*, B247448, at p. 6.)

B. *Subsequent Proceedings Regarding Alex*

The acrimonious litigation, including disputes over Alex's custody, education, and extracurricular activities, continued. In particular, there were disputes over whether Alex would attend a UCLA Math Academy and participate in soccer. On October 24, 2014, the trial court made further pendente lite orders, awarding sole legal custody of Alex to Polina with respect to education and extracurricular activities.

On November 10, 2014, Alex's attorney, Rickett, filed a request for modification of child custody and visitation, seeking to give Polina sole medical decision-making authority and to modify Arthur's visitation to six hours of monitored visitation a week. He explained that Arthur was making unilateral decisions, failing to return Alex to Polina following visitation, and refusing to allow Rickett to speak to Alex.

Following a hearing on January 5, 2015, the trial court found that Arthur was "directly interfering with [Polina's]

visitation time with minor Alexander." The court modified the visitation schedule. It also granted "sole legal custody to [Polina] pending trial so she may enroll minor in therapy."

C. *Trial*

Trial commenced on February 2, 2015 and lasted three days on custody issues alone. Both parties testified at length, as did Alex. At the outset, it became apparent the parties were not following the January 5, 2015 court order, as Alex was not visiting with Polina, she had not been able to enroll him in therapy, and Rickett had been prevented from talking to Alex since October 2014.

Arthur testified about the history of the parties' custody battle and what he believed to be the best custodial arrangement. He described how two years earlier Alex had complained that he was scared of his mother and that she had hit him on one occasion. Arthur provided numerous examples of Polina refusing to allow Alex to participate in Math Academy and soccer, failing to come to their son's soccer and chess matches, leaving him in the care of others, and preventing visits with father. He contended that Alex did not want to spend time with his mother. Much of Arthur's testimony focused on past events and complaints that Polina had committed perjury, physically abused Arthur six years earlier, and brought false accusations of sexual abuse against him.

Arthur also leveled numerous charges against Rickett, including complaints about his initial appointment, billing practices and purported fraud. Arthur admitted that he had prevented Alex from meeting with Rickett and participating in counseling, as ordered by the court. He was resistant to Alex

meeting with Rickett prior to giving testimony. When asked by the court if he would follow a 50/50 custodial plan, Arthur stated that he could not, as he could not communicate with Polina and his health was deteriorating due to the shared custody orders. He requested that the court award sole physical custody to himself or Polina with no or limited visitation for the other parent.

Polina was examined by Arthur about a restraining order entered against her six years earlier and the parties' long litigation history. She acknowledged that she worked full time and was not able to pick up Alex from school or get him to all his extracurricular activities. She explained how she made arrangements for others to transport Alex and for child-care after school, and how she had tried to encourage his interest in math. Under questioning by Arthur, Polina detailed their many disagreements about school choice and after-school activities and Arthur's aggressive conduct, which was also exhibited in his interrogation style over two days.

Rickett cross-examined Polina regarding her future plans for Alex's education, care and extracurricular activities. When Polina was asked if she and Arthur could make joint decisions, she stated that she did not think they could.

Alex testified that it was his preference to live primarily with his father because his mother was not taking him to extracurricular activities, and did not pay sufficient attention to him. His father encouraged him to speak with his mother but did not enforce the week on/week off schedule. He also explained that his father made him write down what he did on weekdays when he returned from his mother's home.

Alex admitted that his parents had serious problems communicating, which he attributed primarily to his mother. Under leading questioning by Arthur, Alex stated that the custody battle was so stressful for him that he would prefer to be with his father than to have his parents share custody. When questioned by Polina, Alex acknowledged that Arthur had discussed the divorce case with him; Arthur had told him that shared custody was too "frustrating" and that if the court did not award Arthur sole custody, he would not be as involved in Alex's life.

Arthur's closing argument consisted largely of attacks on the credibility of Polina and the conduct of her attorney and Rickett. Polina argued that it was in Alex's best interest for her to have sole custody, as things had worked well previously when she had primary custody. She also stated that she was able to provide a more stable home environment and to provide medical insurance and resources if Alex needed counseling. Rickett recommended that Polina be granted legal and physical custody of Alex, with Arthur to have visitation. He explained that Polina tried to resolve conflict between herself and Arthur in a child-centered way, while Arthur created conflict.

D. *The Trial Court's Ruling*

Based on this evidence, the trial court awarded Polina sole legal and sole physical custody, with Arthur to have the first and third weekends of each month and the parties to divide the holidays and school breaks. In making this order, the court conceded that, in theory, "the best interest of Alex would be a 50/50 week-on, week-off order, where both [parents] would then go to counseling." The court also acknowledged that Polina was

not without her faults and that it was concerned whether she would be able to balance her work and Alex's numerous after-school activities. On balance, however, the court concluded that a 50/50 plan was neither possible nor in Alex's best interests given the high conflict between the parents, Arthur's statements that he did not want and would not follow a 50/50 order, his over-controlling nature, and his avowal that his health could not withstand the stress of shared custody. The court declined to order counseling, as "a waste of . . . time and your money" given the parties' high degree of conflict.

DISCUSSION

A. *Appellate Review*

In our second opinion in this case, we set forth "'the most fundamental rule of appellate law . . . that the judgment [or order] challenged on appeal is presumed correct, and it is the appellant's burden to affirmatively demonstrate error.' [Citation.]" (*Ruelas v. Superior Court* (2015) 235 Cal.App.4th 374, 383; accord, *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) We explained that "'[t]o demonstrate error, appellant must present meaningful legal analysis supported by citations to authority and citations to facts in the record that support the claim of error. [Citations.]' [Citation.] 'Mere suggestions of error without supporting argument or authority other than general abstract principles do not properly present grounds for appellate review.' [Citation.] 'Hence, conclusory claims of error will fail.' [Citation.]" (*Multani v. Witkin & Neal* (2013) 215 Cal.App.4th 1428, 1457; accord, *Rojas v. Platinum Auto Group, Inc.* (2013) 212 Cal.App.4th 997, 1000, fn. 3.)

We acknowledged that a party who is representing himself has a more limited understanding of the rules on appeal than an experienced appellate attorney. Whenever possible, we do not strictly apply technical rules of procedure in a manner that deprives a party of a hearing. However, we cautioned, "mere self-representation is not a ground for exceptionally lenient treatment." (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 984.)

Arthur's 72-page brief on appeal includes 60 pages of facts, including facts not relevant to the issue before the trial court, peppered with his own commentary and criticism. Ultimately, Arthur raises 24 claimed trial court errors, many of which overlap. Nowhere in his brief is there a properly presented claim of error, supported by relevant legal authority and meaningful legal analysis. Given the vague nature of many of these claimed errors and the failure to provide specific factual support, we would be justified in dismissing the appeal without further analysis. (*Multani, supra,* 215 Cal.App.4th at p. 1457.) Nonetheless, in recognition of his self-represented status, we have attempted to ascertain the thrust of his central claims.

Review of the record indicates that Arthur's ascertainable claims of error are without merit.[4] For example, he claims "the

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[4] Certain of Arthur's claimed errors are so inchoate they cannot be addressed on appeal. For example, his complaint that the trial court "failed to find that minor's counsel . . . exceeded his authority . . . and . . . acted improperly" and his contention that the court failed to delay trial until completion of a child custody evaluation lack supporting argument or citation to the record. Similarly, his claims that the court "ignored statutory provision[s]" and "failed to be consistent in its statements, findings and orders," are without record support or argument and are properly disregarded by this court.

[c]ourt unreasonably alleged that all . . . [Arthur] wanted to do is to squabble and show that [he] is a better father and [Polina] is a bad mother. The [c]ourt erroneously stated that it's [Arthur] who doesn't want 50/50 custody." The record shows that Arthur spent the majority of the trial attempting to prove he was a good father and Polina was a bad mother, and Arthur stated unequivocally—and the trial court verified—that he did not want 50/50 custody.

Arthur raises two claims relating to the procedures at trial, complaining the court excluded "witnesses to the family dynamic," and did not give him sufficient time to cross-examine Alex. The trial court has discretion to limit witness testimony "to control any excesses by excluding cumulative as well as irrelevant testimony. (Evid. Code, §§ 350, 352.)" (*People v. Trinh* (2014) 59 Cal.4th 216, 246.) Likewise, "[t]he court shall exercise reasonable control over the mode of interrogation of a witness so as to make interrogation as rapid, as distinct, and as effective for the ascertainment of the truth, as may be, and to protect the witness from undue harassment or embarrassment." (Evid. Code, § 765, subd. (a).) The court permitted Arthur to present the testimony of a coach, the parties' middle son, and a family friend. The court did not abuse its discretion in precluding Arthur from also calling a neighbor to testify that he did homework with Alex, and a coach to testify about his activities at sporting events, as the court accepted Arthur's testimony on these issues. Limiting the examination of a child by his parents also was well within the proper exercise of discretion, especially given the leading nature of Arthur's questioning and Alex's obvious distress at being caught in the middle of this custody battle.

Arthur also claims that the trial court "failed [to] give any weight to [Polina's] perjuries, inconsistent statements, defamation, forgery and fabrication of documents." The trial court listened to an abundance of evidence on these issues and gave it the weight it felt it deserved. The trial court simply did not give the evidence the weight *Arthur* believed it deserved. This is not a basis for reversal, as determining the weight to be given to the evidence and the credibility of the witnesses is the exclusive province of the trier of fact. (*Izell v. Union Carbide Corp.* (2014) 231 Cal.App.4th 962, 974; *In re Marriage of Ackerman* (2006) 146 Cal.App.4th 191, 204.)

Arthur complains that the court "failed to state what weight it gave to the testimony of the most valuable witness, [Alex], who testified that he wanted 100 [percent] custody schedule with [Arthur]." But Arthur cites no authority to suggest the trial court must quantify the weight it gives to each witness's testimony. Moreover, Alex never testified that he wanted Arthur to have sole custody over him; this is simply Arthur's interpretation of Alex's testimony. Alex testified it was less stressful for him to live fulltime with Arthur than it was for him to split his time equally between his parents. In light of the difficulties between Arthur and Polina when they shared custody, Alex's testimony supports the trial court's conclusion that sole custody should be awarded to one parent, but it does not require a finding that that parent be Arthur.

Arthur further claims that the trial court "failed to find that [Arthur] is the one who would make [Alex] available to other parent, and [Polina] would be the one who would prevent any contact of [Alex] with his dad." This claim of error points to Arthur's real complaint: that after all the evidence he presented

to show that he was the better parent and his refusal to accept 50/50 custody, the trial court awarded sole legal and physical custody of Alex to Polina, not him. This leads us to the issue which we will address further on appeal: whether the trial court abused its discretion in making the child custody award.

B. *Child Custody Award*

The court has broad discretion in making a child custody determination and may award custody to either parent based on "the best interest of the child." (Fam. Code, § 3040; see *Montenegro v. Diaz* (2001) 26 Cal.4th 249, 256.) Appellate reversal of custody and visitation orders is justified only for abuse of discretion. (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32; *In re Marriage of Fajota* (2014) 230 Cal.App.4th 1487, 1497.)

Under the abuse of discretion standard, we do not substitute our judgment for that of the trial court but determine only if any judge reasonably could have made such an order. (*In re Marriage of Cryer* (2011) 198 Cal.App.4th 1039, 1046-1047; *In re Marriage of Schlafly* (2007) 149 Cal.App.4th 747, 753.) The question before us is "'whether the court's factual determinations are supported by substantial evidence and whether the court acted reasonably in exercising its discretion.' [Citation.]" (*In re Marriage of Berger* (2009) 170 Cal.App.4th 1070, 1079; accord, *In re Marriage of McHugh* (2014) 231 Cal.App.4th 1238, 1247.) To meet the substantial evidence standard, the court's factual determination must be based on "evidence of ponderable legal significance, evidence that is reasonable, credible and of solid value." (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651; accord, *In re Marriage of Burwell* (2013) 221 Cal.App.4th 1, 24, fn. 21.)

In determining whether the trial court acted reasonably in making the order, we must also determine if there is a "reasonable basis on which the court could conclude its decision advanced the best interests of the child. [Citations.]" (*F.T. v. L.J.* (2011) 194 Cal.App.4th 1, 15.) That is, the trial court's exercise of its discretion "'must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue.' [Citations.]" (*Ibid.*) The appellant bears the burden of affirmatively showing the trial court failed to exercise its discretion in accordance with the law. (*Id.* at p. 16.)

Here, the record shows that the trial court understood the legal principles involved in its determination as to child custody and visitation and made its ruling in accordance with those principles. It recognized its paramount consideration was Alex's best interests and it attempted to fashion an order which would be in his best interests *given the relationship between the parties and Arthur's refusal to accept a 50/50 custody arrangement*. Under these circumstances, the court explained that the ideal 50/50 custody arrangement was unworkable and a reasonable option was to award sole custody to one parent with visitation to the other. That way, the parties would not be continually undermining one another's decisions regarding Alex's care, education and extracurricular activities.

There is substantial evidence in the record to support the trial court's decision to award custody to Polina. While, as the trial court recognized, she had her faults and did not always make the correct decisions with respect to Alex, she was not trying to control his life and use him to control Arthur. She

attempted to consult with Arthur over decisions concerning Alex; she did not make unilateral decisions as Arthur did.

Arthur kept Alex with him in the months before the trial, despite a court order finding that Arthur was "directly interfering with [Polina's] visitation time with" Alex and granting her sole legal custody so she could enroll Alex in therapy. Arthur placed on Alex the burden of deciding to return to Polina's home. Arthur refused to recognize Alex's attorney and would not take him to see his attorney until the court threatened to refuse to allow Alex to testify. Again, Arthur placed the burden of deciding whether to talk to the attorney on Alex, rather than complying with court orders. The trial court properly considered both parents' attitudes in making its determination as to custody and visitation. (*In re Marriage of Winternitz* (2015) 235 Cal.App.4th 644, 655 ["the family court's emphasis on the respective attitude of each parent regarding visitation with the other parent does not demonstrate an abuse of discretion"].)

Additionally, Arthur's continuing attempts—even on appeal—to portray Polina as a liar and a perjurer do not establish an abuse of discretion in awarding her custody. Questions as to Polina's credibility were a consideration for the trial court in determining the weight to give her testimony but do not affect our determination as to whether there is sufficient evidence to support the trial court's findings. (*Izell v. Union Carbide Corp.*, *supra*, 231 Cal.App.4th at p. 974.)

We conclude the trial court had a reasonable basis for its child custody order, and substantial evidence supports the order. Therefore, the court did not abuse its discretion in awarding Polina sole custody of Alex and giving Arthur visitation only.

DISPOSITION

The order is affirmed. Arthur is to bear his costs on appeal.

KEENY, J.*

We concur:

PERLUSS, P. J.

ZELON, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.